

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition No.:** 84-018-16-1-4-01007-17  
**Petitioner:** Todd Newman – Newman Co., Inc.  
**Respondent:** Vigo County Assessor  
**Parcel No.:** 84-10-16-377-006.000-018  
**Assessment Year:** 2016<sup>1</sup>

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. Petitioner initiated the 2016 appeal with the Vigo County Property Tax Assessment Board of Appeals (“PTABOA”). On June 5, 2017, the PTABOA issued its final determination. Petitioner then filed the Form 131 petition on July 13, 2017.
2. Petitioner elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. On March 29, 2018, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”), held a hearing. Neither the Board nor the ALJ inspected the property.
4. Property owner Todd Newman was sworn and testified. Vigo County reassessment supervisor Michael West was sworn and testified for Respondent:<sup>2</sup>

**Facts**

5. The property under appeal consists of a neighborhood shopping center located at 7205 South State Road 46 in Terre Haute.
6. The 2016 assessed value is \$41,500 for the land and \$607,700 for the improvements for a total of \$649,200.
7. Petitioner requested a total assessment of \$500,000.

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<sup>1</sup> Petitioner entered 2017 as the year under appeal on the Form 131. However, all of the documentary evidence, testimony, and Board records indicate the year under appeal is 2016.

<sup>2</sup> Harrison Township Chief Deputy Alexis Layton was present to observe the hearing.

## Record

8. The official record for this matter is made up of the following:

a. A digital recording of the hearing,

b. Exhibits:

Petitioner Exhibit 1: Petitioner's 2013 – 2016 assessed values,  
Petitioner Exhibit 2: Petitioner's summary of comparable assessed values,  
Petitioner Exhibit 3: Beacon printout for subject property,  
Petitioner Exhibit 4: Beacon printout for 3912 South US Highway 41 in Terre Haute (Lots 1 & 2),  
Petitioner Exhibit 5: Beacon printout for 3912 South US Highway 41 in Terre Haute (Lot 3),  
Petitioner Exhibit 6: Beacon printout for 3013-3017 South US Highway 41 in Terre Haute,  
Petitioner Exhibit 7: Beacon printout for 2501 South 3<sup>rd</sup> Street in Terre Haute,  
Petitioner Exhibit 8: Beacon printout for 1216 South 3<sup>rd</sup> Street in Terre Haute,  
Petitioner Exhibit 9: Beacon printout for 5129 South US Highway 41 in Terre Haute,

Respondent Exhibit 1: GIS map of subject property,  
Respondent Exhibit 2: 2014 appeal memo printout,  
Respondent Exhibit 3A: 2014 property record card ("PRC") for subject property,  
Respondent Exhibit 3B: 2015 PRC for subject property,  
Respondent Exhibit 3C: 2016 PRC for subject property,  
Respondent Exhibit 4: PTABOA request for Petitioner's income information,  
Respondent Exhibit 5: Petitioner's revenue and expenses for December 31, 2014 and 2015,  
Respondent Exhibit 6: 2011 International Association of Assessing Officers income approach to value: "Proper Expenses,"  
Respondent Exhibit 7A: 2014 IncomeWorks Evaluation Report,  
Respondent Exhibit 7B: 2015 IncomeWorks Evaluation Report,  
Respondent Exhibit 7C: 2016 IncomeWorks Evaluation Report,  
Respondent Exhibit 8: Respondent restructured Petitioner's revenue and expenses for 2014 and 2015,  
Respondent Exhibit 9: Email from IncomeWorks showing capitalization rate development,  
Respondent Exhibit 10: IncomeWorks Market Specific Guide for Vigo County,  
Respondent Exhibit 11: Respondent's restructured 2016 subject PRC showing income approach and cost approach,  
Respondent Exhibit 12: Michael West's Level III Certified Indiana Assessor – Appraiser certificate,

Board Exhibit A: Form 131 petition and attachments,  
Board Exhibit B: Hearing notice,  
Board Exhibit C: Hearing sign-in sheet,

c. These Findings and Conclusions.

### **Burden of Proof**

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
10. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).
11. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).
12. These provisions may not apply if there was a change in improvement, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
13. There is some dispute with regard to which party has the burden of proof. The 2016 assessed value under appeal is \$649,200. When Petitioner filed the 2016 appeal, the original 2015 assessed value was \$604,900. The increase from that 2015 original assessed value of \$604,900 to the 2016 assessed value of \$649,200 represents an increase of approximately 7.3%. Based on those values, Respondent would ordinarily have the burden for 2016.

14. However, there is a discrepancy between the parties as to whether the 2015 assessed value was appealed. When asked by the ALJ whether the property was appealed in 2015, Petitioner expressly responded in the affirmative. On the other hand, Mr. West stated “the County has no record of a ’15 appeal.” Despite that statement, all of the PRCs offered by Respondent show a second 2015 assessed value column in the amount of \$636,100 under the heading “Form 130.” When the ALJ inquired about this second column, Mr. West responded:

That was because of a 2014 appeal, we made an adjustment and came to a stipulated agreement in 2014, and then the 2015 because of when the hearing happened, we went ahead and adjusted ‘15 based upon the ‘14 decision. But we have no record of an actual ‘15 appeal, but it was put under the Form 130 because we did adjust it based upon the ’14 appeal.

15. Considering the 2016 assessed value of \$649,200 in light of the 2015 adjusted amount of \$636,100 results in an increase between 2015 and 2016 of only 2.06%. Under those circumstances, Petitioner would have the burden for 2016.
16. Regardless of whether or not the 2015 assessment was formally appealed, Respondent’s PRC and accompanying testimony indicate that the 2015 assessed value was increased based on a 2014 appeal. However, Respondent has not offered any authoritative basis to support such an increase. In order for a county assessor to make a change to an assessed value absent an appeal, which Respondent admits is the case here, the assessor must take some formal action such as issue a notice of change in assessment. Merely making entries on a PRC is not sufficient to validly effectuate a change in an assessed value. Consequently, for purposes of this appeal, the Board finds that the 2015 assessed value was \$604,900 and, as a result, Respondent has the burden of proof for 2016. To the extent Petitioner seeks an assessment below the previous year’s level, however, he bears the burden of proving the lower value.

### **Objection**

17. Respondent objected to Petitioner’s Exhibits 2 through 9 because the comparable properties contained therein were, according to Respondent, valued using the cost approach, while the subject property was valued using the income approach. The ALJ took the objection under advisement. The objection goes to the weight of the evidence rather than its admissibility and is therefore overruled.

### **Summary of the Parties’ Contentions**

18. Respondent’s case:
- a. The subject property consists of a 15,290 square foot neighborhood strip mall.  
*West testimony; Resp’t Exs. 1 & 11.*

- b. Respondent contends that it sometimes utilizes IncomeWorks when developing an income approach to value. When using IncomeWorks, Respondent claims properties are usually valued using potential income versus actual income because the actual income information is often not made available to Respondent. However, that was not the case here because Petitioner provided what he claimed was his actual income data. *West testimony; Resp't Exs. 5 & 8-10.*
- c. Respondent purported to develop an income approach for 2016 using Petitioner's actual 2014 and 2015 information. Respondent began with the 2014 and 2015 income and expense information provided by Petitioner and then calculated "restructured" NOIs for those years based on IAAO standards regarding "improper expenses." Specifically, Respondent added back depreciation, amortization, interest, and real estate expenses to Petitioner's original NOI calculations. Given those adjustments, Respondent arrived at a rounded two-year average NOI of \$109,829. Respondent then applied a 10% capitalization rate which it claims was derived from the use of IncomeWorks during the calculation of the original assessed value. Applying that 10% rate results in a value of \$1,098,300. *West testimony; Resp't Exs. 6, 7C & 8-11.*
- d. Respondent also contends that the "2016 cost approach value is \$903,600." Respondent then claims to have reconciled his purported income approach value and purported cost approach value giving the cost approach value the most weight. As a result, Respondent requested the 2016 assessed value be increased to \$903,600. *West testimony; Resp't Ex. 11.*

19. Petitioner's case:

- a. Petitioner contends that from 2013 through 2016 the assessed value increased by 43%.<sup>3</sup> He claims Respondent has never provided an explanation as to how the assessment was calculated. *Newman testimony; Pet'r Ex. 1.*
- b. Petitioner presented an assessment comparison to show the subject property was over-valued based on the assessed values of six shopping centers in Terre Haute. He claims the purportedly comparable properties range in size from 7,938 square feet to 24,527 square feet while the subject property consists of approximately 15,290 square feet. He further contends the assessed values per square foot range from \$12.23 to \$32.99 for the purportedly comparable properties while the subject property's assessed value is \$42.33 per square foot.<sup>4</sup> *Newman testimony; Pet'r Exs. 2-9.*

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<sup>3</sup> The increase from the 2013 amount of \$475,000 shown on Petitioner's Exhibit #1 to the 2016 amount of \$649,200 shown on the Form 115 is actually an increase of approximately 36.67%.

<sup>4</sup> Petitioner used a 2016 assessed value of \$647,200 in arriving at his value of \$42.33 per square foot while the actual 2016 assessed value is \$649,200.

- c. Petitioner also compared the percentage increase or decrease in the comparable properties' assessed values over their previous year's assessed values. Three of those values increased by 1.1% or less and the other three decreased by 5.7% or less over the previous year's assessed values. However, Petitioner claims the assessed value of the subject property increased by over 7% between 2015 and 2016.
- d. Petitioner further contends that the purportedly comparable properties experience a traffic flow of approximately 40,000 cars per day while the subject property only gets about 8,000 cars per day. He suggests such a difference indicates a much greater potential income to the purportedly comparable properties.  
*Newman testimony; Pet'r Exs. 2-9.*

### Analysis

- 20. Respondent failed to provide sufficient evidence for increasing the 2016 assessment to \$903,600. To the extent Petitioner sought to have the 2016 assessment reduced to \$500,000, he also failed to present sufficient evidence. The Board reached this decision for the following reasons:
  - a. Indiana assesses real property based on its true tax value, which does not mean fair market value, but rather the value determined under the Department of Local Government Finance's rules. The DLGF's 2011 Real Property Assessment Manual defines true tax value as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in a tax appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *See id.; see also, Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally recognized appraisal practices. *See Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also* Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).
  - b. Regardless of the type of evidence offered, a party must explain how that evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2016 assessments, the valuation date was January 1, 2016. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

- c. Respondent prepared an income valuation approach using Petitioner's actual income and expenses from 2014 and 2015 and applied a 10% capitalization rate derived from IncomeWorks in the development of the original 2016 assessed value.
- d. In valuing a property under the income approach, it is appropriate to consider the historic and projected income and expense data of the property in question. It is also necessary to consider that same kind of data from other comparable properties in order to make accurate and realistic projections about the income stream a property should be expected to produce. Considering both types of income and expenses helps to protect against distortions and inaccurate value estimates that might be caused by extraneous factors (such as bad management or poor business decisions) that have nothing to do with the inherent value of a property. *See Indiana MHC, LLC v. Scott County Assessor*, 987 N.E.2d 1182, 1186 (Ind. Tax Ct. 2013). In this case Respondent only used Petitioner's actual income and expense data in arriving at the NOIs for 2014 and 2015 and failed to take into account any market data.
- e. Respondent also failed to provide adequate information regarding the 10% capitalization rate that was applied. A capitalization rate "reflects the annual rate of return necessary to attract investment capital" and "is influenced by such factors as apparent risk, market attitudes toward future inflation, the prospective rates of return for alternative investments, the rate of return earned by comparable properties in the past, the supply of and demand for mortgage funds, and the availability of tax shelters." *See Hometown Associates L.P. v. Maley*, 839 N.E.2d 269, 275 (Ind. Tax Ct. 2005). Respondent provided an email purportedly from IncomeWorks showing several ranges of capitalization rates for various types of properties, but failed to specifically explain how the 10% capitalization rate was chosen or the basis upon which it was derived. *See Grabbe v. Carroll County Assessor*, 1 N.E.3d 226, 231 (Ind. Tax Ct. 2013) (upholding determination that income approach lacked probative value where taxpayer failed to provide evidence demonstrating why 20% capitalization rate was proper).
- f. Respondent also failed to explain why no deduction was made for vacancy and collection losses and provided no detail with regard to the expenses it added back in arriving at the "restructured" NOIs for 2014 and 2015. As a result, the Board finds Respondent failed to walk it through every element of its income approach analysis as required by *Long* and did not demonstrate that its analysis conforms to generally accepted appraisal and assessment principles. Consequently, Respondent's income approach did not provide probative evidence of the subject property's market value-in-use for 2016.
- g. Respondent also purportedly arrived at a cost approach value of \$903,600 for 2016. That amount appears to be the total of the land value of \$57,700 appearing at the bottom of the first page of the PRC presented as both Respondent Exhibit

3C and Respondent Exhibit 11 and the improvement value of \$845,900 appearing at the bottom of the second page of that PRC. However, other than testifying that the “2016 cost approach assessed value is \$903,600” and writing “\$903600 COST” on the PRC presented as Respondent Exhibit 11, Respondent presented no probative evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).

- h. Thus, Respondent failed to provide probative evidence that the assessed value should be increased to \$903,600. And Respondent offered no probative evidence or substantial argument to support the assessed value of \$649,200. Therefore, the 2016 assessment must be reduced to the previous year’s level of \$604,900. That, however, does not end the Board’s inquiry because Petitioner requested an assessed value of \$500,000. As mentioned above, Petitioner has the burden of proving it is entitled to that reduction. The Board therefore turns to Petitioner’s evidence.
- i. Petitioner presented what amounts to an assessment comparison using six shopping centers located in Terre Haute. Indeed, parties can introduce assessments of comparable properties to prove the market value-in-use of the property under appeal. Ind. Code § 6-1.1-15-18(c). Here, however, Petitioner merely observed that the comparable properties were also located in Terre Haute and were of somewhat similar size. Simply because a property is in the same city as the subject does not show that it is comparable. Furthermore, while the size, age, quality of construction, and condition of amenities all play a role in determining value, Petitioner made little attempt to identify similarities in the properties or value the differences among them. The assessed values and prices per square foot of the purportedly comparable properties do not by themselves support a finding that the subject property was assessed incorrectly. Consequently, Petitioner’s assessment evidence lacks probative value for a reduction in the assessment.

### **Conclusion**

- 21. Respondent had the burden of proving the 2016 assessed value should be \$903,600. Respondent failed to make a prima facie case supporting that value. Petitioner similarly failed to make a prima facie case for an assessed value of \$500,000. Consequently, the Board orders that the 2016 assessed value be reduced to the 2015 amount of \$604,900.

## Final Determination

In accordance with the above findings of fact and conclusions of law, the Board determines that the 2016 assessed value must be changed.

ISSUED: June 26, 2018

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

### - APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.